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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,607	08/30/2001	Martin C. Flautt	25035A	2480

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OWENS CORNING
2790 COLUMBUS ROAD
GRANVILLE, OH 43023

EXAMINER

GRAY, JILL M

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/943,607

Applicant(s)

FLAUTT ET AL

Examiner

Jill M. Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The rejection of claims 1-21 under 35 U.S.C. 103(a) as being unpatentable over WO 02/42235 A2 (Flautt) in view of Yamada et al, 4,427,482 is withdrawn in view of applicants arguments.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-7, 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, these claims contains the trademark/tradenames "DREWFLOC 270", "EPRIEZ 3456", "WITCOBOND W290H", "EPICURE 3253", "AMICURE CG 1400", and "GEORGIA MARBLE CALWHITE II". Where a trademark or tradename is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or tradename cannot be used properly to identify any particular material or product. A trademark or tradename is used to identify the source of goods, and not the goods themselves. Thus, a trademark or tradename does not identify or describe

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the goods associated with the trademark or tradename. In the present case, the trademark/tradenames are used to identify a polyacrylamide, an emulsified epoxy resin, a polyurethane resin, curing agent for epoxy and polyurethane and an epoxy curing catalyst, and calcium carbonate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage, Jr. 6,436,476 B1 in view of PCT Publication WO 91/15434 (Adizama) and Yamada et al, 4,427,482 (Yamada).

Sage teaches reinforcing fibers coated with an aqueous dispersion of an epoxy urethane film former, further teaching that other additives and processing aids can be included. See column 5, lines 39-64. In addition, Sage teaches that polyurethanes such as "WITCOBOND 320" can be used, as required by claim 7. The treatment is dried per claim 2, see column 7, line 10, and the thickener comprises a water soluble polymer per claim 3, see column 5, lines 58-60. Sage also teaches the formation of a strand, mat and composite material, as required by claims 11-2. See column 8, lines 3-24. Sage is silent as to the incorporation of a filler material and the specific thickener. Adizama teaches an aqueous coating composition comprising a thermoplastic polymer powder, surfactant, a polyurethane film former, thickening agent and water. See

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abstract. The thickening agent is an acrylamide polymer such as "DREWFLOC 270", as required by claims 4 and 5. See Example 1. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition of Sage by adding an acrylamide thickener as taught by Adizama to result in a composition having good stability and good consistency. As to the incorporation of a filler material, Yamada teaches impregnated reinforcing fibers wherein a filler material such as calcium carbonate (per claims 10 and 14-15) may be added to the resin composition in order to reduce stickiness of the impregnated fibers (per claims 18-21). See column 1, lines 46-60 and column 6, lines 13-16. It would have been obvious to the skilled artisan to modify the composition of Sage by including a filler such as calcium carbonate to reduce tackiness of the resultant treated fibers. As to the amount of filler material, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. Regarding claim 6, it is the examiner's position that in the absence of clear factual evidence to the contrary, the selection of one epoxy resin over another is no more than a preferential selection with the reasonable expectation of obtaining the efficacious properties associated with epoxy resins.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage, Jr. 6,436,476 B1 in view of PCT Publication WO 91/15434 (Adizama) and Yamada et al, 4,427,482 (Yamada) as applied above to claims 1-7 and 10-21, in view of "EPI-CURE 3253" Product data sheet and Hawley's Condensed Chemical Dictionary, Fourteenth Edition, page 366.

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Sage, Adizama and Yamada are each as set forth above, but do not teach the specific curing agent set forth by applicants. Epoxy and polyurethane curing agents such as cyanoguanidine and "EPI-CURE 3253" are well known in the art. It would have been an obvious expedient to the skilled artisan to use as the curing agent of Sage, any known and commercially available curing agents with the reasonable expectation of success.

Response to Arguments

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments' regarding the rejection of claims 5-7, 9 and 15 under 35 U.S.C. 112, second paragraph, as being indefinite is unpersuasive.

Applicants argue that the trademarks used in claims 5-7, 9, and 15 all recited products defined by an unchangeable tradename designation and that the composition of each tradename in each claim refers to a specific product comprised of specific component and that if the product were modified, the tradename designation would change to reflect the modification.

In this concern, the examiner is unpersuaded because a trademark/tradename cannot be used to properly identify any particular product or material. Rather, a trademark is used to identify the source of the goods, not the goods themselves.

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 703.308.2381. The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 703.308.0449. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0651.

jmg
9/13

Jill M. Gray
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